

IN THE UNITED STATES DISTRICT COURT FOR THE  
WESTERN DISTRICT OF MISSOURI  
SOUTHERN DIVISION

THOMAS HAGBERG, )  
                        )  
                        )  
Petitioner,         )  
                        )  
                        )  
v.                     ) Civil Action  
                        ) No. 05-3421-CV-S-ODS  
UNITED STATES OF AMERICA, )  
                        )  
                        )  
Respondent.         )

**ORDER AND JUDGMENT**

Pursuant to the governing law and in accordance with Local Rule 72.1 of the United States District Court for the Western District of Missouri, the petition herein for a writ of habeas corpus was referred to the United States Magistrate Judge for preliminary review under the provisions of 28 U.S.C. § 636(b).

The United States Magistrate Judge has completed his preliminary review of the petition herein and has submitted to the undersigned a report and recommendation that petitioner be denied leave to proceed in forma pauperis and that the petition filed herein for a writ of habeas corpus be dismissed without prejudice.

Petitioner has filed exceptions to the report and recommendation of the magistrate judge, in which he reasserts his contention that he should be awarded credit for 32 months spent in state custody. He acknowledges that he has not exhausted administrative remedies. Whatever the merits of petitioner's allegations, he must first exhaust administrative remedies. There is no basis for petitioner's claim that the exhaustion requirement should be excused. Petitioner's exceptions

must therefore be overruled. It is

ORDERED that petitioner be, and he is hereby, denied leave to proceed in forma pauperis; it is further

ORDERED, ADJUDGED and DECREED that the petition filed herein be dismissed without prejudice.

/s/ Ortrie D. Smith  
ORTRIE D. SMITH,  
United States District Judge

Date: January 12, 2007